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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/612,518	07/02/2003	John E. Lertzman	50578/C995	3534

23363 7590 06/21/2010

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ART UNIT	PAPER NUMBER
3688	

MAIL DATE	DELIVERY MODE
06/21/2010	PAPER

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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/612,518
Filing Date: July 02, 2003
Appellant(s): LERTZMAN ET AL.

Raymond R. Tabandeh
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed April 2, 2010 appealing from the Office action mailed December 14, 2009.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments after Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

20030083930	**Burke**	**5-2003**
6345261	**Feidelson**	**2-2002**

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

(a) Claims 1-21, 38 and 48 are rejected under 35 U.S.C. 102(a) as being anticipated by Burke, US20030083930.

Claim 1 and 38*:* Burke discloses a method and a *system* for collaborative affinity marketing including a processor, an aggregator, a participant and a merchant comprising:

r*eceiving by a* collaborative affinity marketing *system enrollment information from* the *plurality* of aggregators, participant and merchant (see page 1, Para [0005] whereby an embodiment of the invention (collaborative affinity marketing system) involves a clearinghouse component (processor), a nonprofit component (aggregators), supporter component (participants) and a merchant component, also see page 4, Para

[0016] whereby receiving via a central computer system enrollment information from (a plurality of) nonprofits, supporters and merchants accounts;

assigning a participant identification code to the participant wherein the participant identification code keeps identity of the participant anonymous (see page 2, [0020],lines 2-4 whereby the supporter (participant) is assigned an account number ID (identification code) via the CC, also see page 4 [0067] whereby system provides security for all participants, also see Para [0070], whereby a supporter can automatically send a rebate to a nonprofit when they make purchases by *simply entering a system ID*, i.e. 'amount spent, location, time, date etc', (no requirement for personal information for rebate, hence anonymous via simply entering a system ID);

storing enrollment information of the plurality of aggregators, participant, and merchant, wherein no merchant is yet selected by the participant (see Figure 1, Central Computer and Data Storage; also see page 1, [0016] whereby a central computer system enrolls nonprofits, supporters and merchant accounts and process as well as *update accounts*, examiner interprets *update accounts* as the CC initially storing enrollment information wherein no merchant is yet selected by the participant, hence when merchants or additional merchants are selected by the participant, the CC updates these accounts);

selecting by the participant a selected aggregator from the plurality of aggregators (see page 4, [0064], lines 1-3 whereby the (affinity) system allows all consumers to participate in earning rebates for (selecting) their favorite nonprofits);

providing the participant identification code to the merchant, when the participant initiates a purchase transaction with the merchant (see page 4, Para [0070], whereby a supporter can automatically send a rebate to a nonprofit when they make purchases by *simply entering a system ID)*;

storing *information about the* participant identification code and an amount for the purchase transaction by the merchant (see claim 1, lines11-12 'having the entry terminal (merchant) record (store) the ID, as well as the amount of dollars spent in a transaction);

receiving the stored participant identification code, the amount for the purchase transaction, and (computes/collects) funds corresponding to a portion of the amount for the purchase transaction by the *processor* (see page 4, [0070], also see page 1, [0015] whereby in Fig 1, a system embodying a central computer system having a clearinghouse (processor) component, also see page 1, [0005] whereby the processor is a central component of the system connecting the other three components, hence the processor is always integral to every transaction thereby the processor inherently collect/computes a portion of each transaction); and

sending a portion of the funds received by the processor to the selected aggregator (see page 4, [0070], also see page 4, [0067], line 3 for dispersing donations).

Claim 2: Burke discloses the invention as in claim 1 above, and further discloses the feature wherein the participant enrolls with the processor (see page 1, Para [0016], lines 1-3).

Claim 3: Burke discloses the invention as in claim 1 above, and further discloses the feature wherein the participant enrolls with the selected aggregator (see page 2, [0035]).

Claim 4: Burke discloses the invention as in claim 3 above, and further discloses the feature further comprising sending the participant identification code to the processor without disclosing the identity of the participant (see page 2, [0035] whereby the nonprofit provides participant with a TC (transaction card) , also see page 2, [0020], lines 8-9 whereby via participant TC at cash register(s) participant connect their ID and amount of their spending (using same method for transferring ID to processor as if they had enrolled via the processor, see page 2, Para [0021], also see page 4 [0067] whereby system provides security for all participants, also see Para [0070], whereby a supporter can automatically send a rebate to a nonprofit when they make purchases by *simply entering a system ID*, i.e. 'amount spent, location, time, date etc', (no requirement for personal information for rebate, hence anonymous via simply entering a system ID);).

Claim 5: Burke discloses the invention as in claim 1 above and further discloses the feature wherein the providing the participant identification code to the merchant comprises of presenting a participant card to the merchant (see page 4, Para [0070], line 4).

Claim 6: Burke discloses the invention as in claim 5, above and further discloses the feature wherein the participant card is one or more of a group of a bar coded card, a card with magnetic strip, a smart card and a radio frequency identification card (see Fig 2, Mag Stripe and Bar Code).

Claim 7: Burke discloses the invention as in claim 1 above, and further discloses the feature wherein the sending a portion of the funds received by the processor from the merchant to the selected aggregator (nonprofit component) comprise of providing a credit to the aggregator (see page 1, Para [0007], lines 5-7).

Claim 8: Burke discloses the invention as in claim 1 above, and further discloses the feature wherein the purchase transaction is an on-line transaction and the participant identification code is provided to the merchant electronically (see page 1, Para [0006], lines 7-9 whereby clerk (merchant) receives user/customer ID via barcode, mag stripe, key stroke or other (electronic) modality, also see Para [0017], lines 1-4 whereby the merchant terminal connects to the system/computer/CPU via communications system via satellites/cables (on-line transaction))

Claim 10: Burke discloses the invention as in claim 1 above, and further discloses the feature wherein the participant identification code is stored in a merchant sales tracking system as an item, when the participant initiates a purchase transaction (see page 1, Para [0007], lines 1-4 whereby one embodiment the entry terminal records the ID and the transaction data which is then stored (in merchant sales tracking system) as well as uploaded to the central clearinghouse component).

Claim 11:Burke discloses the invention as in claim 1 above, and further discloses the feature wherein the *selected* aggregator is one or more of the group [of] a non-for-profit organization, a marketer organization or a product distributor (see page 4, Para [0069], lines 4-7 whereby the invention offers multiple reward programs (non-profit aggregators).

Claim 12: Burke discloses the invention as in claim 1 above, and further discloses the feature wherein the enrollment information of the plurality of aggregators, participant, and merchant are stored in a processor database (see page 1, Para [0016] lines 1-5 whereby the central computer system (processor database) enrolls nonprofits, supporters and merchant account and processes and updates accounts).

Claim 13: Burke discloses the invention as in claim 12 above, and further discloses the feature wherein the processor database is accessible via a processor website (see page 1, Para [0017], lines 1-12 whereby the CC is a system or computer contains a CPU and a large data storage and a communications systems accessible via the internet (website) or intranet networks in homes and businesses).

Claim 14: Burke discloses the invention as in claim 1 above, and further discloses the feature wherein the funds corresponding to a portion of the amount of purchase transaction are sent to the processor via electronic fund transfer (see page 4, Para [0061] whereby the CC computes the rebate and updates all accounts, also see Para [[0067], lines 4 whereby a bank based (electronic fund transfer) method of tracking and dispersing donations (portion of funds from merchant sent to processor, processor inherently collects its portion of each transaction or batch of transactions)).

Claim 15: Burke discloses the invention as in claim 1 above, and further discloses the feature wherein the portion of the funds received from the merchant are sent to the selected aggregator via electronic fund transfer (see page 4, Para [0061] whereby the CC computes the rebate and updates all accounts, also see Para [[0067], lines 4 whereby a bank based (electronic fund transfer) method of tracking and dispersing donations (portion of funds from merchant sent to aggregator)).

Claim 16: Burke discloses the invention as in claim 1 above and further discloses the feature comprising storing historical data for each of the processor, *selected* aggregator, participant and merchant (see page 4, Para [0067], lines 1-7 whereby an automatic and centrally coordinated data tracking system, an audible system (storage) for all participants (processor, aggregator, participant and merchant)).

Claim 17: Burke discloses the invention as in claim 1 above, and further discloses the feature further comprising *validating* the stored participant identification code, the amount of purchase transaction, and the funds corresponding to a portion of the amount of purchase transaction by the processor (see page 2, Para [0023], whereby the participant ID is validated via a secure personal identification number (PIN) and at the time of a store purchase information regarding the purchasing activity (amount of purchase transaction) is connected to the account number to form a data packet which is sent to the CC for processing and accounts management, also see [0061] whereby the CC computes the rebate and updates ALL (inherently includes processor portion) accounts).

Claim 18: Burke discloses the invention as in claim 17 above, and further discloses the feature wherein stored transaction data is for statistical and demographic analysis (see page 4, Para [0069],lines 3-9 whereby customer spending and loyalty behavior are recorded (stored) in order to provide sophisticated and robust reporting capability (statistical and demographic analysis).

Claim 19: Burke discloses the invention as in claim 1 above, and further discloses the feature comprising sending a report generated by the merchant to the processor (see page 2, Para [0022]).

Claim 20: Burke. discloses the invention as in claim 1 above, and further discloses the feature comprising sending a report generated by the processor to the *selected* aggregator (see page 4, lines 1-6 whereby the components (nonprofit/aggregator as one of components) accepts and interfaces with multiple and diverse merchants to provide sophisticated reporting capability).

Claim 21: Burke discloses the invention as in claim 1 above and further discloses the feature comprising sending a report generated by the processor for the participant (see page 4, Para [0067 whereby a centrally coordinated data tracking system provides information for all participants).

(b) Claim 48 is rejected under 35 U.S.C. 103(a) as being unpatentable over Burke in view of Feidelson et al. (6,345,261).

Claim 48: Burke discloses the invention as in Claim 1 above, further comprising receiving transaction data a financial information by the processor from the merchant (see paragraph [0007] lines 1-4) and validating the received financial information (see

paragraph [0023] lines 13-15 whereby CC processes entry terminal data transferred to the CC, Examiner interprets processing as the same as is done for commercial merchant credit card batch processing which inherently includes verification and validation of funds received and proper distribution to sub account(s)). However he fails to disclose the feature further comprising storing a contract rebate percentage for each of the plurality of merchants and validating the received funds against the stored contract rebate percentage for the merchant.

Feidelson discloses the feature wherein the method includes, for a customer loyalty program, negotiating a rebate percentage with [each] merchant(s) ... and receiving rebates from the merchants as a result of the [customer] respective purchases (see abstract lines 1-15, also see column 2, lines 40-57; Examiner interprets 'negotiating rebate percentages with merchants' as implicitly allowing for different percentage rebates for different merchants; also see column 13, lines 51-54 for contract and rebates, also see Fig 4 whereby e-Toys has a 20% rebate and Amazon.com has a 15% rebate) and validating the received funds against the stored contract rebate percentage for the merchant (see column 6, lines 10-20 whereby purchase/rebate database information made at merchant web sites and information regarding rebate monies that are due and have been received from the merchants are stored in the database and implicitly/inherently validated via '...(rebates) have been received from the merchants').

Therefore, it would have been obvious t one skilled in the art at the time of the invention to modify the invention of Burke to include the feature of negotiating, storing and validating the different rebate percentages (amounts/financial information) from each merchant as taught by Feidelson so as to provide a user-friendly loyalty based customer award program that is attractive to both merchants and customer.

(10) Response to Argument

(a) Appellant argument #1 (pages 3/17, 4/17 and 5/17 under section (7)): Claims 1 and 38: Appellant recites '…these claims include the elements of "receiving...funds corresponding to a portion of the amount for the purchase transaction by the processor," [,] "verifying the received funds against the received amount for the purchase transaction by the processor," and "sending a portion of the funds received by the processor to the aggregator." [,] Burke does not teach any of the above claim limitations….The Examiner, citing paragraphs [0005] and [0015], states the "the processor is a central component of the system connecting the other components, hence the processor is always integral to every transaction thereby the processor inherently collect[s]/computes a portion of each transaction." However, Burke, in the cited text, merely states that the "clearinghouse component connects the other three components via a variety of entry terminal[s]."…This does not make the above claim limitation inherent…. transaction data to the merchant component….Appellant respectfully submits that it is not appropriate to deem 'receiving …funds corresponding to a portion of the amount for the purchase transaction' taught by the clearing house

component of Burke, when Burke specifically teach the opposite of that limitation by emphasizing that 'the central clearinghouse component reports all transaction[s] to the merchant for having the merchant send a rebate to the nonprofit organization

Examiner Response to argument #1: Referring to Figure 1, Burke has only one Central Computer through which all merchant transactions must pass, the merchants must receive instruction from the central clearinghouse on how much and to whom to issue rebates as can be seem from the Appellants recitation that 'the central clearinghouse component reports **all transaction[s]** to the merchant for having the merchant send a rebate to the nonprofit organization...'. The emphasis is on **all transactions,** hence the Central Computer (CPU) is in effect controlling all operations and directing the merchant component(s) to issue rebates, one may consider the merchant component issuing a rebate as simply a peripheral of the Central Computer in Figure 1. The Appellant interpretation of the wording in Burke, '...the central clearinghouse component **reports** all transaction[s] to the merchant for having the merchant send a rebate to the nonprofit organization...' whereby the emphasis is on reports is misinterpreted and taken out of context; in this instance the use of the word '**reports**' is not just merely a report, but rather an expression for the transfer of data on rebates which is crucial to the merchants ability to issue rebates based upon 'direction' from the CPU.

(b) Argument #2: Appellant recites '...with respect to the limitation of 'verifying the received funds against the received amount for the purchase transaction by the process, 'the Examiner again interprets the 'batch processing' as 'including

'verifying the received funds against the received amount for the purchase transaction by the processor.;...a mere recitation of 'batch processing' does not teach the specific and detail claim limitation of 'verifying the received funds against the received amount...'.

Examiner Response to argument #2: Appellant's Claim 1, lines 19-20 recite 'verifying the received funds against the received amount for the purchase transaction by the processor;' Examiner review of the Specification does not support the 'verifying' step, the word 'verifying' is not recited in the original disclosure. The word 'received' is recited nine (9) times in the specification, but not in connection with 'verifying the received funds. The original Claims do not recite such 'verifying the received funds', however the original Claim 18 recites '...processing the validated information for statistical and demographic analysis.' Examiner interpretation of this claim element, "verifying the received funds against the received amount for the purchase transaction...', was with regard to normal processing in any electronic transaction system, a validation of funds received for electronic transactions is either explicit and/or inherent to Burke or any other similar electronic transaction system.

(c) Argument #3: Appellant recites '...with respect to the limitation of 'sending a portion of the funds received by the processor to the aggregator,' Burke does not disclose such[a] limitation'.

Examiner Response to argument #3: Examiner refers to response in Argument #1 whereby the CPU directs all activities regarding transfer of funds, and whereby the Merchant processors act as peripherals to the CPU, executing the commands of the

CPU which via referring to Burke paragraphs [0015] and [0016] whereby the CPU 'coordinates and centralizes the activity of the other three components (lines 3-4 of [0015] an [0016], lines 1-5 whereby the CC (CPU) (a) enroll[s] nonprofits, supporter and merchants accounts, (b) record[s] shopping activity, (c) process[es] and update[s]) accounts, (d) calculate[s] rebates, and (e) provide[s] reports for the components...'.

(d) Argument #4: Appellant recites 'The dependent claims 2-21 and 48 are dependent from the independent claims 1 and therefore include all the limitations of the independent claims 1...Accordingly, these claims are also allowable over the cited references, as being dependent from an allowable independent claim and for the additional limitations they include therein.

Examiner Response to argument #4: The independent claims have been addressed in Response to Arguments #1, 2 and 3. No further arguments were presented by the Appellant in Argument #4.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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